

# MCA amends norms for IDs | SEBI mandates filing of PPMs through merchant bankers - eases Cat I investments - streamlines/eases other regulations | MoF notifies increased insurance cap of 74%

MoF, MCA and SEBI and have issued following set of changes:

[With the view to boost foreign investments in the insurance sector, Ministry of Finance \(MoF\) has notified changes to the Foreign Exchange Management \(Non-debt Instruments\) Rules, 2019 \(NDI Rules\) increasing the sectoral cap of foreign investment in the insurance company to 74% under the automatic route. MoF has also notified the revised conditionalities to be complied by the companies with foreign investment.](#)

In relation to independent directors (ID), MCA has introduced the following amendments:

- [Requirement of an annual report on persons included as ID under the Companies \(Creation and Maintenance of databank of Independent Directors\) Rules, 2019; and](#)
- [Relaxation in the requirement for IDs to pass the online proficiency self-assessment test \(Online Test\) under the Companies \(Appointment and Qualification of Directors\) Rules, 2014 | Advocates/CA/CS/Cost Accountant with 10 years' experience exempted](#)

And, with a view to further streamline the regulatory framework, SEBI has introduced number of changes including the following:

- [SEBI has notified new SEBI \(Share Based Employee Benefits and Sweat Equity\) Regulations, 2021 and has merged the existing SEBI \(Issue of Sweat Equity\) Regulations, 2002 and SEBI \(Share Based Employee Benefits\) Regulations, 2014.](#)
- [Lock-in period relaxed in case of public offers, change in definition of promoter group where promoter is a body corporate and other changes introduced.](#)
- [Relaxation in certain disclosures under the SEBI \(Substantial Acquisition of Shares and Takeovers\) Regulations, 2011 \(Takeover Code\).](#)
- [AIF - PPMs to be filed mandatory through merchant bankers, Debt funds can invest in securitized debt instruments, investment flexibility to Cat I AIF – VCFs, issue of partly paid-up units to investors and other changes to the SEBI \(Alternative Investment Funds\) Regulations, 2012 \(AIF Regulations\)](#)
- [Shareholding of promoter\(s\) and promoter group to be disclosed separately in the shareholding pattern.](#)
- [No requirement to manual filings where the listed company has complied with System Driven Disclosure mechanism.](#)
- [Creation of lien in the demat account of the shareholders in tender offers.](#)

Aforementioned changes are analyzed below:

## A. Increase in sectoral cap for FDI in insurance companies to 74% and other conditionalities

The sectoral cap of FDI for insurance companies has been increased to 74% under automatic route, as compared to the earlier cap of 49%. In following conditionalities attached to FDI in insurance companies have been revised:

1. **Indian dominated management:** The revised condition requires that in case of an Indian insurance companies having foreign investment, following persons should be Resident Indian Citizens:
  - (i) majority of its directors,
  - (ii) majority of its key management persons (KMP) [KMP shall have the meaning as per the guidelines made by the Insurance Regulatory and Development Authority of India (IRDAI) on corporate governance for insurers in India]; and

(iii) at least one among the chairperson of its board, its managing director and its chief executive officer.

Earlier, the condition required that an Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by Department of Financial Services or IRDAI as per the rules or regulation issued by them from time to time.

2. **Compliance with Indian Insurance Companies (Foreign Investment) Rules, 2015:** Indian insurance companies having foreign investment to comply with the provisions under the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time and applicable rules and regulations notified by the Department of Financial Services or the IRDAI from time to time.

Further, applications for foreign direct investment in private banks having joint venture or subsidiary in insurance sector may be addressed to the RBI for consideration in consultation with the IRDAI in order to ensure compliance with the limit of FDI applicable to the insurance sector.

3. **Composition of board and key managerial persons of insurance intermediaries:** Now, the composition of the Board of Directors and key management persons of Intermediaries or Insurance Intermediaries are required to be as specified by the concerned regulators from time to time.

The aforesaid amendments have been introduced vide the FEM (Non-debt Instruments) (Second Amendment) Rules, 2021 dated August 19, 2021 ([available here](#)).

#### **B. Report on independent director's participation and relaxation in requirement of IDs to pass the Online Test | Advocates/CA/CS/Cost Accountant with 10 years' experience exempted**

1. **Annual Report of Independent Director's (ID) participation:** For the purposes of improving corporate governance and to keep a check on persons included in the data bank for IDs, MCA has now mandated that the Indian Institute of Corporate Affairs (IICA) shall send an annual report to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an ID within 60 days from the end of every financial year. The format for such annual report has also been provided which includes participation of the ID in the e-learning modules and other training programs and workshops organized by IICA. The aforementioned requirement has been inserted vide the Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021 dated August 19, 2021 ([available here](#)).
2. **Relaxation in requirement of IDs to pass the Online Test :** The Companies (Appointment and Qualification of Directors) Rules, 2014 (**Appointment of Directors Rules**) *inter alia* requires that every individual whose name is included in the data bank is required to pass an Online Test conducted by IICA within a period of 2 years from the date of inclusion of his/her name in the data bank, failing which, such individual's name shall be removed from the databank of the IICA. However, certain categories of individuals are exempted from the aforesaid requirement. MCA has now extended these exemptions to include the following individuals who will not be required to pass the Online Test:
  - **Individuals associated with Government:** Individuals who have served for a total period of not less than 3 years as on the date of inclusion of his/her name in the data bank in the pay scale of director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,— (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities; and
  - **Advocates/CA/CS/Cost Accountants:** Individuals, who are or have been, for at least 10 years: (i) an advocate of a court; or (ii) in practice as a chartered accountant; or (iii) in practice as a cost accountant; or (iv) in practice as a company secretary.

The exemptions will help creation of larger pool of persons who will become qualified as independent directors and will ease the burden on companies to effectively meet the independent directors. The amendments have been provided vide the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021 dated August 19, 2021 ([available here](#)).

#### **C. Share Based Employee Benefits and Sweat Equity**

SEBI has implemented certain key decisions taken at its SEBI Board Meeting dated August 6, 2021 ([available here](#)) relating to share based employee benefits and sweat equity benefits, and has notified the new SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, thereby merging the two regulations, namely SEBI (Issue of Sweat Equity) Regulations, 2002 and SEBI (Share Based Employee Benefits) Regulations, 2014.

Some of the key changes:

1. Companies allowed to provide share-based employee benefits to employees, who are exclusively working for such company (whether in India or outside India) or any of its group companies including its subsidiary or its associate or of a holding company of the company.
2. No minimum vesting period in case of death/permanent incapacity. The company implementing employee benefit schemes are required to frame an appropriate policy with respect to the death or permanent incapacity of an employee, subject to compliance with applicable laws.
3. The unappropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust to be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year, or the second subsequent financial year subject to approval of the compensation committee/nomination and remuneration committee for such extension to the second subsequent financial year.
4. Maximum yearly limit of sweat equity shares that can be issued by a company listed on the main board to be 15% of the existing paid-up equity share capital within the overall limit not exceeding 25% of the paid-up capital at any time.
5. In case of companies listed on the Innovators Growth Platform (IGP), the maximum yearly limit to be 15% and overall limit to be 50% of the paid-up capital at any time. This enhanced overall limit for IGP shall be applicable for 10 years from the date of company's incorporation.

The complete text of the new Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 is available [here](#).

#### D. Relaxed lock-in period for promoters and other shareholders

SEBI has provided following relaxations in case of issue of securities:

1. **Revision on the definition of "promoter group" where promoter is a body corporate:** The definition of promoter group where the promoter is a body corporate has been revised to omit from the definition, body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold 20% or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds 20% or more of the equity share capital of the issuer and are also acting in concert.
2. **Relaxation in lock-in period for promoters:** The lock-in period has been revised as follows:

Provision	Existing Requirement	Revised Requirement
<b>Lock-in of minimum Promoters' Contribution:</b> <b>Minimum promoters' contribution including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India</b>	3 years from the date of commencement of commercial production or date of allotment in the initial public offer (IPO), whichever is later	18 months from the date of allotment in the IPO.  However, in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period to be 3 years from the date of allotment in IPO.
<b>Lock-in of promoters' holding in excess of minimum Promoters' Contribution</b>	1 year from the date of allotment in IPO	6 months from the date of allotment in IPO.  However, in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be 1 year from the date of allotment in IPO.

Further, the term “capital expenditure” has been defined to include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc.

The aforesaid relaxation of lock-in period has also been made in case of further public offer (**FPOs**).

### 3. **Relaxation in lock-in period for persons other than promoters | Boost to VCF/AIFs, FVCIs:**

- The entire pre-issue capital held by persons other than the promoters to be locked-in for a period of 6 months from the date of allotment in IPO, instead of exiting 1 year.
- Further, equity shares held by a venture capital fund or alternative investment fund of category I or Category II or a foreign venture capital investor, were not subject to lock-in if such equity shares were locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor. Now, in a major boost to venture capital and private equity investment, such shares will not be subject to lock-in if such equity shares were locked in for a period of at least six months from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor

### 4. **Relaxation in lock-in of party-paid securities:** In case of FPOs, lock-in period for partly paid securities has been reduced from existing 3 years to 18 months.

The aforesaid changes have been made vide SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2021 dated August 13, 2021 ([available here](#)).

## **E. Amendments to Takeover Code | Disclosure norms eased**

Provision	Amendment
<b>Disclosure of acquisition of aggregate shareholding in target company</b>	SEBI has clarified that any acquirer, together with persons acting in concert with him, who acquires shares or voting rights in a target company, together aggregating to 5% or more of the shares of such target company, will be required to disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.
<b>Omission of the requirement for continual disclosures of aggregate shareholding by any person and promoters of the target company</b>	<p>Regulation 30 of the Takeover Code has been omitted and continual disclosures are no longer a mandatory requirement. Regulation 30 provided that:</p> <ul style="list-style-type: none"> <li>▪ Persons, together with persons acting in concert with him/her holding shares or voting rights entitling such person to exercise 25% or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of March 31.</li> <li>▪ Promoter of every target company shall together with persons acting in concert with him/her, disclose their aggregate shareholding and voting rights as of March 31.</li> </ul> <p>The above disclosures were required to be made to every stock exchange where the share of the target company are listed and the target company within 7 working days from the end of the financial year.</p>
<b>Disclosure of encumbrances not required where the encumbrance is undertaken in a depository</b>	<p>SEBI has amended Regulation 31 of the Takeover Code to clarify that promoters shall not be required to disclose the following encumbrances if the encumbrance is undertaken in a depository:</p> <ul style="list-style-type: none"> <li>▪ details of shares in such target company encumbered by him/her or by persons acting in concert with him/her</li> <li>▪ details of any invocation of such encumbrance or release of such encumbrance of shares</li> </ul>

The above amendments have been made to the Takeover Code vide the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2021 dated August 13, 2021([available here](#)), and shall come into force from **April 1, 2022**.

## F. Amendments to the AIF Regulations | PPMs to be filed through Merchant Bankers

Provision	Amendment
<b>“Debt Fund” to now include securitized debt instruments</b>	The definition of “debt fund” under the AIF Regulations has been amended to include securitized debt instruments, along with debt securities of listed or unlisted investee companies, as per the stated objectives of the Fund. Hence, a debt fund would be an AIF which invests primarily in debt securities of listed or unlisted investee companies or in securitized debt instruments as per the stated objectives of the AIF.
<b>Investable funds linked to the tenure of the fund</b>	It has been provided that ‘Investable funds’ would be the corpus of the scheme of AIF net of expenditure for administration and management of the fund estimated for the tenure of the fund. SEBI has inserted an explanation clarifying that ‘tenure’ herein means the duration of scheme from the day of its launch till last day of the term as specified in the fund documents.
<b>Units to include partly-paid up units</b>	‘Unit’ refers to the beneficial interest of investors in the AIF or a scheme of the AIF, and may be fully or partly paid up. SEBI has herein clarified that partly paid-up units shall represent the portion of committed capital invested by the investor in the AIF or scheme of the AIF.
<b>PPM to be filed through merchant banker   Merchant banker interposed between SEBI and AIF   To come into force on 91<sup>st</sup> day from August 31, 2021</b>	<ul style="list-style-type: none"> <li>▪ The AIF shall file the private placement memorandum (PPM) with SEBI, <u>through a merchant banker</u>, for the purposes of launching a scheme.</li> <li>▪ SEBI may communicate its comments, if any, to the merchant banker prior to launch of the scheme and the merchant banker shall ensure that the comments are incorporated in the PPM prior to launch of the scheme.</li> </ul> <p><b>Aforementioned changes will come into force on the ninety first day from August 31, 2021.</b> The transition period seems to have been provided to put mechanism in place for merchant bankers and SEBI to put relevant system in place for the same.</p>
<b>Investment of un-invested portion of investable funds and divestment proceeds pending deployment of funds /distribution to investors</b>	Un-invested portion of the investable funds and divestment proceeds pending distribution to investors may be invested in liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, Triparty Repo Dealing and Settlement, Commercial Papers, Certificates of Deposits, etc. till the deployment of funds as per the investment objective or the distribution of the funds to investors as per the terms of the fund documents, as applicable.
<b>Category I AIFs can invest in units of Category II AIFs</b>	It is provided that Category I AIFs can invest in units of Category II Alternative Investment Funds.
<b>Amendments to investment conditions for venture capital funds (VCFs)- at least 75% of investable funds of VCFs to be invested in unlisted equity shares or equity linked instruments; flexibility to remaining investable funds</b>	<ul style="list-style-type: none"> <li>▪ SEBI has amended the minimum threshold of investable funds of VCFs from at least two-third to at least 75% of the investable funds which shall be invested in unlisted equity shares or equity linked instruments of a venture capital undertaking or in companies listed or proposed to be listed on a SME exchange or SME segment of an exchange. These investment conditions shall be achieved by the fund by the end of its life cycle.</li> <li>▪ The condition for VCFs to invest one-third of its investable funds in subscription to IPO of a venture capital undertaking whose shares are proposed to be listed, debt or debt instrument of a venture capital undertaking, preferential allotment of equity shares or equity linked instruments of a listed company, equity shares or equity linked instruments of a financially weak company, or special purpose vehicles, has been removed.</li> </ul>
<b>SME Funds and Infrastructure</b>	<ul style="list-style-type: none"> <li>▪ SME Funds are now permitted to invest at least 75% of its investable funds in</li> </ul>

<b>funds permitted to invest in units of Category II AIFs</b>	<p>units of Category II AIFs which invest primarily in such venture capital undertakings or investee companies.</p> <ul style="list-style-type: none"> <li>Infrastructure Funds are also permitted to invest at least 75% of its investable funds in units of Category II Alternative Investment Funds which invest primarily in such venture capital undertakings or investee companies or special purpose vehicles.</li> </ul>
<b>Category II AIFs, VCFs and SME Funds exempt from Reg 3(1) and (2) and Reg 4(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations)</b>	Category II AIFs, VCFs and SME Funds shall be exempt from Regulation 3(1) and (2) and Regulation 4(1) of the PIT Regulations in respect of investment in companies listed on the SME exchange or SME segment of an exchange pursuant to due diligence of such companies subject to the following conditions: (a) the fund shall disclose any trading in securities pursuant to such due diligence, and (b) such investment shall be locked in for a period of one year from the date of investment.
<b>Minimum grant threshold for Social Venture Funds not applicable to accredited investors</b>	Social Venture Funds may accept grants provided that the amount of grant that may be accepted by the fund from any person shall not be less than INR 25 lakhs. However, this minimum threshold shall not be applicable to accredited investors.

The above amendments have been made vide the SEBI (Alternative Investment Funds) (Fourth Amendment) Regulations, 2021 dated August 13, 2021 ([available here](#)).

#### **G. Separate disclosure of shareholding pattern of promoter(s) and promoter group entities**

In a view to increase transparency to the investors, SEBI has now mandated listed entities to provide segregated shareholding of promoter(s) and promoter group. Regulation 31(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 mandates that all entities falling under promoter and promoter group be disclosed separately in the shareholding pattern on the website of stock exchanges, in accordance with the format(s) specified by SEBI. Till now the shareholdings of promoter(s) and promoter group entities were being collectively disclosed under 'table II - Statement showing shareholding pattern of the Promoter and Promoter Group' as per the format provided by SEBI. The aforementioned modification has been implemented by SEBI vide Circular dated August 13, 2021 ([available here](#)).

#### **H. Relaxation for ease of doing business in System driven disclosures**

SEBI had implemented the System Driven Disclosures (SDD) in phases under SEBI Circular dated September 9, 2020 ([SDD Circular](#)) and required that such system would run parallel with the existing system i.e. the entities shall continue to independently comply with the disclosure obligations under SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) as applicable to them till March 31, 2021. Since the SDD has gone live on April 1, 2021, SEBI has now clarified that for all such listed companies who have complied with requirements of the SDD, the manual filing of disclosures as required under Regulation 7(2) (a)&(b) of PIT Regulations is no longer mandatory. This relaxation has been introduced vide SEBI circular dated August 13, 2021 ([available here](#)).

#### **I. Marking lien in the demat account of the shareholders in tender offers**

Presently, in case of acquisition of shares through stock exchange mechanism pursuant to tender offers for the purpose of takeovers, buy back and delisting of securities, the shares tendered by the shareholders are required to be directly transferred to the account maintained by the Clearing Corporation and different tendering processes are being adopted by depositories. To reduce the systematic risk and reduce time and cost, it has now been decided that the following mechanism be adopted:

- A lien to be marked against the shares of the shareholders participating in the tender offers.
- Upon finalization of the entitlement, only accepted quantity of shares shall be debited from the demat account of the shareholders.
- The lien marked against unaccepted shares to be released.

The detailed procedure for tendering and settlement of shares under the revised mechanism is specified under SEBI Circular dated August 13, 2021 ([available here](#)). The revised mechanism is applicable to all the tender offers for which Public Announcement is made on or after **October 15, 2021**.

We hope you have found this information useful. For any queries/clarifications please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

**Manendra Singh, Associate Partner – Email – [ManendraSingh@elp-in.com](mailto:ManendraSingh@elp-in.com)**

**Tanvi Goyal, Principal Associate – Email – [TanviGoyal@elp-in.com](mailto:TanviGoyal@elp-in.com)**

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